IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

GIFT TAX REFERENCE No 1 of 1988
TO
GIFT TAX REFERENCE No 4 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SMT.MANA SARABHAI
SMT.GEETA SARABHAI
SHRI GAUTAM SARABHAI
SMT.SHYAMA SARABHAI

Versus

COMMISSIONER OF GIFT TAX

Appearance:
MR RK PATEL FOR MR KC PATEL for Applicant.
MR MANISH R BHATT for Respondent.

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 06/09/2001

COMMON JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In these referencs at the instance of the assessee, the following questions have been referred to us for our opinion in respect of assessment years between 1977-78 and 1979-80.

1 "Whether, on the facts and in the circumstances of the case, exercise of power of appointment by the assessee was a transfer of the assessee's interest in the property under Section 2(xxiv)(c) of the Gift-tax Act making the assessee liable to tax under Gift-tax Act ?"

2 If the answer to question No.1 in the affirmative whether the assessee by exercising the power of appointment regarding her interest in the property and naming the persons to whom the trustees of the original trust should transfer the property at a future date became liable to gift-tax in this assessment year ?"

3 "Whether, the expression 'in such manner' in clause (1)(iii) of the Trust Deed did not empower the trustees to make a direct transfer to appointee trusts. If it did so empower, whether there had been such a direct transfer for which no tax is leviable as it had already been paid at the time of the first transfer ?"

2 We have heard Mr.R.K.Patel, learned Counsel for the assessee and Mr.M.R.Bhatt, learned Counsel for the revenue. Learned Counsel for the parties fairly state that the questions raised herein have already been considered by this Court on 4.9.2001 in Gift Tax Reference No. 2 of 1986 and decided against the assessee. Following the aforesaid decision we answer question Nos. 1 and 2 in the affirmative i.e. in favour of the revenue and against the assessee.

3 Our answer to question No.3 is in the negative i.e. in favour of the revenue and against the assessee.

4 The references stand disposed of accordingly with no order as to costs.

Sd/- Sd/-

(M.S.Shah,J) (D.A.Mehta,J)

m.m.bhatt